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Attorneys for Defendants,
Milestone Financial, LLC, William R. Stuart and
Bear Bruin Ventures, Inc.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re E. MARK MOON, Debtor,	)	CASE NO. 20-30711
	)	CHAPTER 11
E. MARK MOON AND LORI H.	)	ADV NO. 20-03117
MOON)	
	)	MILESTONE FINANCIAL, LLC'S
Plaintiffs,	)	OBJECTION TO FORM OF
v.	)	JUDGMENT SUBMITTED BY
Milestone Financial, LLC, a California	)	PLAINTIFFS AND COUNTER
Limited Liability Company, William R.	)	PROPOSED JUDGMENT
Stuart, Bear Bruin Ventures, Inc., a)	
California Corporation, Evergreen	)	Hearing Date: May 27, 2022
Escrow, Inc.	)	Time: 1:30 p.m.
	)	Dept.: remote appearances
Defendants.)	
)	
)	

1 Milestone Financial, LLC ("Milestone") submits its objections to the form of
2 proposed order submitted by Plaintiffs, E. Mark Moon and Lori H. Moon, in this action and
3 submit their counter proposed order as follows:

4 1. Milestone has not stipulated that the Court's judgment is correct and therefore
5 Plaintiffs' form of order that includes language regarding stipulations overstates the degree
6 and extent to which Milestone has agreed to certain calculations. Milestone has reached
7 consensus with Plaintiffs concerning the amount that would be due if the Court's legal and
8 factual rulings were correct, but that is different than Milestone agreeing that the Court's
9 legal and factual rulings are correct. Milestone's form of proposed judgment corrects those
10 errors and makes clear that Milestone is only agreeing to the mathematical calculations based
11 on the Court's ruling and not with the ruling itself.

12 2. Milestone has not stipulated that Plaintiffs are the prevailing parties for
13 purposes of an awards of attorneys' fees. The issue of whether Plaintiffs should be awarded
14 attorneys' fees will either be by a stipulation between the parties, or by a motion filed by
15 Plaintiffs. If the matter is to be resolved based on a motion filed by the Plaintiffs, then
16 Milestone is reserving all its rights to argue both that Plaintiffs are not the prevailing parties
17 and that they are either entitled to a lower level of attorneys' fees than requested or no
18 attorneys' fees at all.

19 3. Plaintiffs' form of judgment provides that they shall have judgment on the
20 usury claim. However, in their operative complaint there was no usury claim. Thus the
21 judgment would be erroneous. The Court did rule that they prevailed on the second cause of
22 action for breach of contract, and that is what Milestone's proposed judgment provides.

1 4. Plaintiffs' form of judgment provides for 7% interest "up to the payoff of the
2 Milestone loan, on or before June 24, 2022." (Plaintiffs' form of judgment - Page 2:13-14).
3 This is not clear and the ambiguity should be addressed. Plaintiffs do provide that "The
4 parties have also stipulated that Milestone is entitled to daily interest of \$140.82 from May
5 13, 2022 up until the time Plaintiffs pay off the Milestone loan." (*Id.* at Page 2:3-4) This
6 language has an ambiguity between the two provisions. Further, the interest may increase if
7 Milestone is forced to advance property taxes or insurance, which increases the principal
8 balance, prior to the full payoff of the loan or a foreclosure sale. When the noteholder is the
9 defendant, interest continues on the fully matured obligation until it is fully paid. (*Epstein v.*
10 *Frank* (1981) 125 Cal. App. 3d 111, 123 ("By analogy, therefore, the payee of a note with a
11 usurious interest provision would be entitled to damages in the nature of interest at the legal
12 rate for that period of time which the obligor on the note withheld the principal beyond the
13 date of maturity.")). If the noteholder files a lawsuit to enforce the note, the interest is at the
14 judgment rate after the judgment. But here, the noteholder did not file a lawsuit and will not
15 be enforcing a judgment when it forecloses on the Property, if the debt is not paid in full.
16 Here, since it is the obligors that filed the action, the Court's ruling only reduces the balance
17 owed but is not a judgment for the noteholder which would affect the noteholder's right to
18 recover the legal rate of interest. Plaintiffs' use of the term stipulated throughout their form
19 of order needs to be carefully tailored to what is actually stipulated and what is merely the
20 agreed mathematical calculation based on the Court's ruling. Obviously, Plaintiffs cannot
21 unilaterally decide what is stipulated and what is not stipulated to.

22 5. Plaintiffs' form of judgment does not acknowledge that the debt remaining is
23 subject to all other terms and conditions of the note, deed of trust, Settlement Agreement,
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1 Indemnity and First Amendment to Promissory Note secured by Deed of Trust and other loan
2 documents. This information is important as the obligation is ongoing. If the Plaintiffs do
3 not payoff the loan and Milestone is required to advance property taxes or insurance, those
4 advances are added to the Plaintiffs' principal balance and bear interest by virtue of the loan
5 documents, that remain in full force and effect, except as modified by the judgment. The
6 judgment should make this clear.

7
8 6. Plaintiffs have provided in their proposed order that they are the prevailing
9 party for purposes of awarding attorneys' fees. (Plaintiffs' form of judgment - Page 2:17-
10 18). This is not agreed to as discussed above, and there will either be a stipulated amount of
11 attorneys' fees or a contested hearing on the attorneys' fees, but certainly Milestone does not
12 stipulate that Plaintiffs are the prevailing party for purposes of awarding attorneys' fees.
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16 Milestone proposes that an accurate judgment would be a judgment in the form of
17 Exhibit "1" attached hereto.
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20 Respectfully Submitted,

21 Date: May 17, 2022

HARRIS L. COHEN, A PROF. CORP.

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23 By: /s/ Harris L. Cohen
24 Harris L. Cohen, Esq.
25 Attorney for Milestone Financial, LLC,
26 William R. Stuart and Bear Bruin Ventures,
27 Inc.
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EXHIBIT 1

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8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
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12 In re E. MARK MOON, Debtor,) CASE NO. 20-30711
13) CHAPTER 11
14 E. MARK MOON AND LORI H.) ADV NO. 20-03117
15 MOON)
16)
17 Plaintiffs,)
18 v.)
19 Milestone Financial, LLC, a California) **JUDGMENT FOR PLAINTIFFS**
20 Limited Liability Company, William R.)
21 Stuart, Bear Bruin Ventures, Inc., a)
22 California Corporation, Evergreen)
23 Escrow, Inc.)
24)
25 Defendants.)
26)
27)
28)

JUDGMENT FOR PLAINTIFFS

1 This case came before the Court on cross-motions for summary judgment.
2 Plaintiffs have elected to have a final judgment entered in the adversary action based on
3 the Court's ruling on the Second Cause of Action against Milestone Financial LLC
4 ("Milestone"). Pursuant to this Court's Order entered April 27, 2022, Plaintiffs shall
5 have judgment on the Second Cause of Action which reduces the amount owed to
6 Milestone secured by the real property located at 11 Mandalay Court, Redwood City, CA
7 94065 (the "Property").
8
9

10 Milestone is entitled to post-maturity interest in the amount of seven (7%) per
11 annum beginning August 1, 2019. Plaintiffs are entitled to credits for amounts paid prior
12 to the maturity of the loan on July 31, 2019, in the amount of Two Hundred Twenty Four
13 Thousand Five Hundred Forty-Eight Dollars and fifty cents (\$224,548.50). Milestone is
14 entitled to pre-maturity credits in the amounts of Nine Hundred Two Thousand Five
15 Hundred Twenty-Five Dollars and thirty-four cents (\$902,525.34) in principal as of
16 September 1, 2016, and Forty Thousand Five Hundred Seventeen Dollars and four cents
17 (\$40,517.04) of advances between September 1, 2016 and August 1, 2019. Pursuant to
18 the Court's April 27, 2022 Order, based on the Court's ruling, the calculation of the
19 amount due at maturity on August 1, 2019 was Seven Hundred Eighteen Thousand Four
20 Hundred Ninety-Three Dollars and eighty-eight cents (\$718,493.88). As of May, 13,
21 2022, the Plaintiffs are entitled to credit for payments after August 1, 2019, in the amount
22 of One Hundred Twenty-Six Thousand Three Hundred Two Dollars and fifty cents
23 (\$126,302.50), and Milestone is entitled to credit for post August 1, 2019, advances of
24 Fifteen Thousand Seven Hundred Ninety-Two Dollars and sixty-eight cents (\$15,792.68)
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JUDGMENT FOR PLAINTIFFS

and post August 1, 2019 interest of One Hundred Forty-Three Thousand Eighteen Dollars and eighty-five cents (\$143,018.85). Milestone is entitled to daily interest at seven percent (7%) per annum of One Hundred Forty Dollars and eighty-two cents (\$140.82) from May 13, 2022, until the obligation is paid in full, subject to any future advances or other credits based on the loan documents. Therefore, the Court finds the following amount owed by Plaintiffs to Milestone as of May 13, 2022, secured by the Property:

Principal as of September 1, 2016	\$902,525.34
Plaintiffs Payments Before Maturity of August 1, 2019 ("Maturity")	(\$224,548.50)
Milestone's Advances Before Maturity	\$40,517.04
Plaintiffs' Payments After Maturity	(\$126,302.50)
Milestone's Advances After Maturity	\$15,792.68
Milestone's 7% Interest After Maturity	\$143,018.85
Total Owed to Milestone as of May 13, 2022	\$751,009.91

The obligation shall bear \$140.82 interest per day from May 13, 2022, until the obligation is paid in full. If payment is not tendered by June 24, 2022, then Milestone may request relief from the automatic stay. All other terms and conditions of the note, deed of trust, Settlement Agreement, Indemnity and First Amendment to Promissory Note secured by Deed of Trust and other loan documents remain in full force and effect.

All remaining causes of action are dismissed with prejudice.

JUDGMENT FOR PLAINTIFFS

1 The Court reserves jurisdiction to hear and determine Plaintiffs' attorneys' fees
2 motion.

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4 **END OF ORDER**
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7 APPROVED AS TO FORM:
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10 By: _____
11 Harris L. Cohen, Esq.
12 Attorney for Defendants
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